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### ***Summary***

This paper presents observations of the Soviet system of justice, including the courts, the procuracy (described as a combination of a prosecutor or district attorney and a police investigator), criminal trials, sentencing, and corrections. The paper is based upon a three-week visit by the author to the USSR as one of 24 American participants in a criminal justice study program. In all, just over three weeks were spent in the Soviet Union including lengthy visits in Leningrad, Moscow, and Tallin (then-capital of Soviet Estonia). The opportunity of first hand observation and direct interaction with Soviet policy and law makers and Soviet academicians has done much toward destroying myths about Soviet justice practices.

A SOCIALIST SYSTEM OF JUSTICE:  
OBSERVATIONS FROM A VISIT TO THE U.S.S.R.

by

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## Introduction

This paper presents observations based upon a visit by the author to the USSR, as one of 24 American participants in a criminal justice study program. The itinerary was arranged by the Citizen's Exchange Corps in New York City.

In all, just over three weeks were spent in the Soviet Union including lengthy visits in Leningrad, Moscow and Tallin, the latter being the capital of Soviet Estonia.

The American group met with various Soviet counterparts in justice, social service, and academic capacities in all three locations. Dialogue was possible through the excellent interpretive services of two co-directors of the study group from Columbia University.

Time and space will not permit here a sharing of the many situations, both humorous and those not so humorous, that were the results of interactions with Soviet counterparts, both officials and citizens. These events could include: the intensive search upon crossing the border into Russia from Finland; the note received on the streets of Leningrad from a Russian citizen asking for help; the Russian high school geography teacher who invited three Americans to his apartment one evening where discussions were held until early the next morning with the customary wine, cheese and vodka; the Russian food and cultural events; the officially disdained blue jeans and rock and roll of the Russian youth; the ride in an official car of the government in lieu of a taxi; the Estonian university couple who befriended us in Tallin; and the Estonian children whom we befriended and made into honorary American Indians.

This paper is intended only to provide a brief descriptive glimpse into Soviet justice policies, procedures and actual practices as they were observed. Much about Russia requires a great deal of thought. The opportunity of first hand observation and direct interaction with Soviet policy and law makers and Soviet academicians has done much toward destroying myths about Soviet justice practices.

## The Soviet System of Justice

A citizen of the USSR is obliged to respect the rights and lawful interests of other persons, to be uncompromising toward anti-social behavior, and to help maintain public order.<sup>1</sup>

In the USSR justice is administered only by the courts.<sup>2</sup> All courts in the USSR shall be formed on the principle of the electiveness of judges and peoples assessors.<sup>3</sup> Justice is administered in the USSR on the principle of the equality of citizens before the law and the court.<sup>4</sup> Proceedings in all courts shall be open to the public.<sup>5</sup> A defendant in a criminal action is guaranteed the right to legal assistance.<sup>6</sup>

These partial quotations from the Soviet Constitution provide the framework for understanding at least the concepts underlying the Soviet systems of justice. As a practical matter most of the discussion to follow describes what can be learned by exchanges with Soviet officials and academicians as well as from an examination of available literature on the Soviet justice system. The courts, the procuracy and the militia are first described. A criminal trial, the peoples' guard, the popularization of law, criminal sanctions, and some concluding impressions about the Soviet justice system follow.

### The Courts and The Procuracy

The focus of the Comrades' Court within the Soviet Union's judicial structure is on minor offenses and offenders. This lower court adjudicates the most minor violations of law as well as minor disputes between individuals. Since nearly all citizens who live in the western urban areas of Russia are apartment dwellers, and over-crowded ones at that, many disputes result. Examples of minor problems handled at this level of the court system include citizen complaints concerning the playing of records, radios or televisions at too great a volume, family arguments that may be so boisterous as to disturb others, and some relatively minor degrees of child abuse.

Police inspectors can hear and receive citizens' complaints of a more serious nature which may find their way to the next level of Soviet judiciary--

the People's Court. A key participant at this level of judiciary and the whole of the criminal justice system is the Soviet procurator.

The Procuracy Office is responsible for investigation of all criminal cases. There is no readily apparent parallel to the procurator in the American justice system. The procurator's function might best be described as a combination of the American prosecutor or district attorney and a police investigator. His or her principal function is to insure that the law is "observed."

The militia (local police) typically perform an initial investigation into a reported criminal offense. The result is submitted to a procurator who proceeds to build a file concerning the defendant and facts related to the case. The file is then used by the procurator to prosecute the case in the Peoples' Court. No one may testify until and unless he/she is first deposed by the procurator.

The procurator's office coordinates the entire criminal justice system's activities. Every three months the procurator meets with the heads of all organizations in the criminal justice system to discuss positive and negative results of their efforts, their difficulties and their plans. Ongoing coordination is viewed as typical of official efforts at all levels of the justice system.

During the court proceedings the judge is the primary actor and participant in the courtroom drama, a very different (and inquisitorial) function from that of the courts of the United States where the adversarial system insures that opposing attorneys capture the major courtroom roles.

The defendant at trial always receives the first questions and has the first opportunity to make oral statements. He or she may also choose to remain silent. Within the Peoples' Court of the Soviet Union, the judge is law trained

but his or her formal education in law is equivalent to a four-year undergraduate program in the United States and is not considered the same as American professional school preparation. Flanking him, actually sitting to his or her immediate right and left at the bench, are two citizen judges (lay persons) from the local municipality who, although not law trained, share equally in fact and in law with the judge, the responsibility for decisions concerning how the case is conducted, and the final decisions. The most severe sentence that the Peoples' Court can pronounce in a criminal case is incarceration up to 15 years in duration.

Judge Kapov (a pseudonym), one of the eight elected judges in the judicial district of Moscow which we visited, and the two lay judges (both female in this case, serving for one week each), met with the American delegation of criminal justice practitioners and academicians prior to commencement of a local trial. Judge Kapov explained, through our interpreters, the organization and policies of the Soviet Court system.

The Supreme Court of the Soviet Union provides supervision for court practices nationwide. Every three months the Supreme Court holds official sessions at which they adopt or make special rulings which include the definition of elements of certain offenses. The Supreme Court can accept or take over any case from a lower court if it feels the case is of special significance; that is, it can be the court of first level. Usually these circumstances involve cases where two or more Soviet Republics have active disputes which may harm or affect all of the USSR.

Each Republic has, in addition, its own Supreme Court with a heavier caseload. These are known as courts of the "second instance." Autonomous Soviet Republics and certain districts also have their own courts. In addition, every

city has its own court. The most numerous are the Peoples' Courts which process more than 90 percent of all criminal cases, almost all civil cases, and most of the administrative cases. Lower court judges are elected by the population of each district; however, the City Court judges are elected by the various City Councils. The members of the Supreme Court of the USSR are elected by the Supreme Soviet. The Supreme Court membership in turn elects the judges for the Supreme Courts of the various Republics.<sup>7</sup>

According to Judge Kapov, civil cases require most of the judges' time at the Peoples' Court level, and each judge considers probably one criminal case per day. The codification of Soviet criminal law is now being attempted, but the administrative law is better developed and administrative law cases appear to be the most complicated. New codes include family law and labor law.

In the processing of a criminal case the judge first examines the procurator's file as an obligation--before trial--a very different situation from that in the United States courts where every shred of evidence, fact, or opinion must be introduced into the case file during the trial and is subject to intense examination by all parties. The Peoples' Court decides upon guilt or innocence during the trial. However, in examining the file in the pre-trial phase, the judge decides whether an alleged action has violated certain criminal articles as well as whether the case is ready for trial.

The defendant may utilize any one of seven possible "defenses." He or she may:

- (1) keep silent;
- (2) plead guilty;
- (3) ask for more information;
- (4) seek additional witnesses;

- (5) seek expert witnesses;
- (6) can obtain a defending lawyer (and usually does); or
- (7) can refuse the services of a defending lawyer and defend himself/herself.

In Russian judicial practices, criminal cases are not indexed. However, periodically, case decisions are distributed by the higher courts to lower ones. The framework for the Soviet court system is based upon a combination of the German, French and English legal systems of the mid-19th century but is primarily influenced by the French. The European influence is traceable to Peter the Great's preoccupation with western Europe's architecture, arts, laws, and social systems.

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#### A Criminal Trial

In a criminal proceeding of the People's Court, our group witnessed the trial of a young man of about 26 to 30 years of age. The defendant was well dressed (white shirt and tie, no coat, a fresh haircut, neat, and overall "clean cut" in appearance). He was accused of having assaulted and beaten his ex-wife. The circumstances seemed to be that the defendant had quarreled with his former wife while discussing the division of property contained in their apartment following the divorce action. Because housing is very difficult to find in the urban centers of Russia, the two were still sharing the same apartment. A fight ensued in which the victim was allegedly struck. She suffered bruises and other relatively minor injuries. The official charge was hooliganism--a rather comprehensive term used to describe delinquent or offensive acts of a relatively minor nature.

The courtroom was situated on the fourth floor of a large and unmarked governmental building a short distance out of central Moscow. A very narrow





The law trained judge, the principal participant in the courtroom, opened the trial by questioning the witness as to his name, his citizenship, the status of his passport (Russian citizens must carry passports which indicate that they have official approval to live in the various cities), his nationality, party affiliation (if any), his educational level, his occupation, marital status and whether or not this was his first offense. All of these questions and answers the judge compared with the information before him in the file previously prepared by the procurator. The defendant then read a prepared statement in his own defense. The defendant stood during the entire process, as well as the complainant/victim who was seated in the observers' benches.

The obviously nervous defendant had been incarcerated immediately after his arrest but had then been released on his own recognizance. It is doubtful that he was permitted to return to the apartment of his ex-wife, however. He was late in arriving for his own trial although this did not appear to upset any of the courtroom participants. The judge questioned the defendant constantly while examining the file. The judge asked the complainant/victim a question; she responded. Then the various attorneys at the two tables spoke. It should be noted that the victim in the Soviet justice system has special rights and is considered an active participant at trial, not just a witness or a non-entity.

The questioning halted for a moment; the judge then identified several witnesses who would later testify and excused them from the courtroom. The various participants then made statements after which the court adjourned to consider several "pre-trial" motions.

Unfortunately our busy itinerary would not permit us to remain after the recess to follow the trial to its conclusion. But the lengthy observation was enlightening in that impressions were garnered about court procedure, the

demeanor and actions of the participants, and the procedures (and structure) of a part of the Soviet court system. One was left with the very definite impression that this was an inquisitorial form of justice based in large measure on an early western European model with Russian interpretations.

Nevertheless, the trial proceedings were impressive to those of us who were skeptical and possibly held preconceived notions regarding Soviet justice. Although there were obvious and somewhat dramatic differences between this trial and a comparable level of trial in the United States, there were also many similarities. A more detailed analysis will have to await further study and perhaps further observations.

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#### The Peoples' Guard and the "Popularization" of Law

Within the Soviet Union there is a long term goal based upon a concept that eventually the citizenry should assume and control all police (militia) operations as well as other governmental operations.<sup>8</sup> It is assumed that most governmental institutions will be eliminated after an undefined historical period and that as the state "dies out," the society will govern itself. The paradigm is that the state becomes organized only with the availability of property and goods which leads to slave owning, feudal societies, followed by a bourgeoisie or capitalist period, and finally a socialist or communist period. Under socialist concepts the Soviets have structured their economy on a long term planning basis in an effort to eliminate the capitalistic competition for goods and services. They hope to thereby eliminate the coercion that might otherwise exist within their socio-economic structure.

There are a number of processes now being turned over to the people and gradually being taken away from the authority and duties of government organiza-

tions. The establishment of the Peoples' Guard from the formal militia, and the establishment of the Comrades' Courts and the Peoples' Courts are examples of this attempt.

The Peoples' Guard is currently made up of citizen volunteers who typically patrol the cities for four hours each evening (roughly 6:00 to 10:00 p.m.) in various districts and neighborhoods. There is, ironically, some difficulty with this effort which relates to the same type of attitudes often found in United States municipal police departments which work with police auxiliary units. Both the U.S. police and the Soviet municipal militia apparently too frequently wish to protect their bureaucracies by following established and traditional patterns of practice. There is a feeling among the militia that professionalism and even jobs will be lost to an unpaid volunteer civilian labor force if the concept is permitted to gain momentum. Looking after one's self seems to have priority over the concept of social equality, at least at the individual level. The goal remains yet unreached, in Soviet Russia, to develop a true citizen's militia, but the effort is underway. Eventually only a small group of highly professional and skilled law enforcement investigators would remain from the current forces of Soviet militia if the goal is obtained.<sup>9</sup>

Currently police preparation includes academic education, even post-graduate education. The militia's academy curriculum focuses on technical studies, management, the collection of information, crime prevention techniques, including the use of dwelling police and alarm systems, and the use of patrol methods. Traffic officers first receive technical education from engineers, then a supplemental educational program. Investigative officers receive more specialized legal education.

There is a substantial effort also underway in the Soviet Union to bring

law-related education to the populace. It is felt that this effort, which is also known as moral education, will lead to a reduced need for formal law procedures. It is argued that self-motivated moral people do not need laws. A tremendous nationwide effort, which impacts some 36 different cultural groups within the Soviet Union, is directed at "popularizing" the law through presentations and written material delivered through all phases of Soviet life, i.e., the schools, the workplace, and on the streets. Three million copies of the monthly magazine, Man and Law, are distributed widely in order to "popularize" the fundamental law. Public trials are also used to explain the law.

In the Soviet Union only eight percent of the total population (250 million) are official members of the Communist Party.<sup>10</sup> Many special groups, however, influence and dominate the Soviet citizenry. These include youth groups such as the Komsomal (Young Communists League) for high school age young people, the Pioneers, for ages 10 to 14 years, and the Little Octoberests, for ages 6 and 7. We were informed that the latter group is somewhat akin to scouting programs in the United States in that camaraderie is emphasized along with the skills of participation which will enhance the goals of the country and result in good citizenship.

The current militia organizations deal with the usual gamut of offenses found elsewhere in the world. In Leningrad, for example, where one out of every 100 citizens might own a car (in Finland, one out of seven), drunken driving as a first offense results in the loss of the driver's license for one year. Parking fines, also handled by the militia, are typically about five rubles, but three of these violations in one year can also cause the loss of the driver's license for one year and is considered a traffic violation. The militia have a retirement and workmen's compensation program as do most Soviet occupations.

Weapons, small pistols, are routinely carried by the militia but are concealed. As a general policy the militia are required to fire a warning shot if pursuing a serious and dangerous suspect. That is to say, there must be a substantial reason to use the weapon. If an individual suspect is shot, it must be for good cause or the militiaman having fired the shot is subject to prosecution, according to Soviet policy.

In Leningrad's central district there is a reported average of nine homicides a year--all alcohol related. If this average were to hold true for all 21 districts in the city, there would be 189 homicides a year, on the average, in this city. This might be compared to the number of murder and non-negligent manslaughters for 1978 of: 197 in Baltimore, Maryland; 219 in New Orleans, Louisiana; 195 in St. Louis, Missouri; or 189 in Washington, D.C.<sup>11</sup> Citizens of the Soviet Union are officially permitted to own long guns for hunting purposes but must belong to a hunting society. This statement should not be interpreted to mean that the Leningrad homicides were related to the use of firearms, however.

The death penalty has experienced an off-and-on sort of practice in Russia similar to that in the United States. The usual method is death by firing squad for particularly serious offenses. Further information on the death penalty and its implementation was not obtainable.

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#### Soviet Law and Punishments

As stated earlier, our group met with various Soviet officials, criminal justice counterparts, in three major western Russian cities of Leningrad, Moscow and Tallin. Officials and representatives of the fields of Soviet law, policing, penology, research and higher education were included in these

meetings through the auspices of various friendship committees, peace committees, foreign language groups, and municipal and state organizations. From discussions in groups and with individuals, impressions were garnered concerning the ideology and practice of criminal law and criminal justice.

A few of these Soviet authorities questioned America's practice of plea bargaining arguing that the practice was not utilized in the Soviet Union because: (1) it bore no relationship to the rehabilitation of the prisoner; (2) it did not function to adequately satisfy the public; and (3) it is practiced away from judicial oversight.

Bail in the Soviet system is available but seldom utilized. This is in contrast to the release on personal recognizance experienced by the criminal defendant cited earlier. Often a collective of individuals will be given responsibility for supervising an offender or suspected offender. These individuals are appointed from among the suspect's or offender's peers within his or her place of work. A provision put into practice over the past five years permits this collective supervision after a guilty finding.

Routine sentencing options in criminal cases include:

1. Deprivation of freedom (incarceration)
2. Corrective tasks without loss of freedom
3. Fine
4. Internal exile (within the USSR and typically to rural areas)
5. Forfeiture of property
6. Three types of probation
  - a. Simple probation
  - b. Probation with work
  - c. Juvenile probation including suspension of sentence.

Deprivation of freedom normally extends for a period of time ranging from three months to ten years and in exceptional cases, to fifteen years.<sup>12</sup>

There had been four types of penal camps or colonies established in the Soviet Union until 1977 when a fifth type of camp was added. At the latter colony there are no guards and the offenders merely live and work together while serving out the sentence. According to our Russian hosts, there is now less use of prison in the nation and much greater utilization of the camps or colonies. The length of punishment (sentence) generally determines the type of incarceration. The types of colonies include those of:

1. General regime - for first offenders, both men and women
2. Strengthened regime - for men convicted of more serious crimes, but first offenders
3. Strict regime - male and female recidivists
4. Special regime - only men, considered to be extremely dangerous criminals or those convicted of capital crimes which have been converted to the 15 year maximum length of sentence

In the correctional colonies, "educational" involvement is mandatory for all persons to the age of 25. The emphasis is on occupational preparation in an effort to lessen the barriers between the prison and the community. A 1976 law now permits offenders to participate, under supervision, in work release programs in local factories. In all colonies repeat offenders are not permitted to be placed with first offenders. Another policy, the convicted offender does not have to disclose his conviction and his records are withheld, is a part of the same reform effort.<sup>13</sup>

Typically the court must decide first whether a criminal act was committed, i.e., that the act committed was a crime. Then, if there is doubt, the court



accepts the testimony of medical experts as to the individual's sanity. In the well known case of Orlov, the Soviet dissident, the sentence was for seven years probation and restriction of freedom including five years of external exile. Internal exile is interpreted to mean the deprivation of the "right" to live in Moscow, Leningrad or the capitals of the various Republics. It was the opinion among the various experts with whom we spoke, that this type of sentence (exile) should be eliminated.

Treason is equated with espionage, working for a foreign intelligence service, going over to the side of an enemy during war, or the selling of state secrets. The spreading of anti-Soviet propaganda is considered to be a crime which damages or destroys the social foundation of the Soviet social structure and has elements of slander. For example, Article 70 of the Soviet Constitution assumes that the court will not want to convict innocent persons. More specifically, Article 49 prohibits the courts from the prosecution of an offender who criticizes the Soviet structure. The court must find that the defendant brought harm to the state which was damaging through actions which he or she spoke or wrote about intentionally and, that the offender intended to bring harm to the state. If the defendant insists that his/her criticisms were for the good of the state, this places the judge in a difficult position, according to our hosts. This might be considered as slander against the state by an offender who has no wish to offend the society. The uses of detention for political dissidents was not addressed by our hosts.<sup>14</sup>

Fifty percent of all accused criminals are sent to jail. The majority of these receive two to four year sentences and 27 percent receive sentences of less than one year. As of April 1, 1977, the new law permitted deprivation of liberty of an offender up to one year but permitted the judge to choose among various "administrative" punishments including fines. One third of the defined

crimes can now result in a sentence of less than one year.<sup>15</sup>

Victimology is a growing area of interest in the Soviet Union. All criminal court trials are open trials except in rape cases and other cases in which the victim objects to this policy.<sup>16</sup>

When asked to respond to questions concerning theories of crime causation, our Soviet hosts addressed the complex negative social interactions as the cause for crime. Social and political perversion with social and psychological roots causes poor psychological behavior that is anti-social. Domestic problems, the abuse of alcohol and ignorance of the law are causative. The officials felt that socio-economic factors, such as the relatively high level of unskilled labor in the Soviet work force (estimated at 40 million), provided the main body of criminals.

An elevator operator may earn approximately 180 rubles a month. A cleaning woman may also earn that amount but only if she takes an additional part-time job. An engineer may earn 120 rules a month. While visiting a polyclinic (an outpatient hopsital), a member of our group asked the female director of the clinic why medical doctors typically were paid less than our Intourist bus driver (who had formerly been a militia officer). Her answer was that medical education was free to those admitted to medical school, and that the doctor only treats one person at a time while the bus driver is responsible for many lives at one time. She did not offer to explain that some occupational/professional groups also have certain other privileges which supplement the take-home pay, privileges which are not available to the more menial workers.<sup>17</sup>

For juveniles over the age of 16, a trial is typically held to adjudicate the offense, but for those under age 16 the cases are processed by a commission

specially appointed to deal with juvenile delinquency. It is estimated that of the total number of criminal cases (number undefined), ten to twelve percent are juveniles processed through the courts. "Many others" are handled by the juvenile commission. Our hosts made it a point to emphasize that 80 percent of all criminal acts are considered to be minor crimes. These same officials felt that the juvenile delinquency problem has been decreasing overall since World War II. Over the shorter periods there are patterns that rise and fall. The number of crimes had decreased 2.6 percent in 1977 from the crime rate of 1976 (again no actual numbers were offered). Part of the drop in the juvenile delinquency rate was attributed to the massive effort to provide education to young people about the law.<sup>18</sup>

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#### Conclusions on a Visit

Very simply, a visitor to the Soviet Union who attempts to learn about justice system practices cannot help but be impressed by the reform efforts apparently underway throughout the nation. The difficulty arises when one attempts to gain a look at the practices themselves. For example, in spite of substantial efforts, we were not permitted to see any working penal institution at any level. Although we were cordially accepted into a courtroom on the one hand, we were not permitted access to criminal statistics on the other. Future exchange visits and additions to the literature on the justice system of the Soviet Union will enhance our growing body of knowledge about this major world power and its justice reform efforts.

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